THELBERT WATTS
v.
UNITED STATES

IBLA 97-64 Decided April 14, 1999

Appeal from an Administrative Law Judge decision affirming denial of a request for permission to remove range improvements. NM-06-95-2.

Affirmed.

1. Grazing Permits and Licenses: Generally

When a party applies to remove range improvements or be compensated because his interests in grazing permits were terminated by a state court's foreclosure proceedings, BLM may properly deny the application because documents establish that when the transfer of the permittee's interests had occurred the permittee had been compensated for the value of the improvements, as required under 43 C.F.R. § 4120.3-5.

APPEARANCES: Thelbert (Sonny) Watts, Mayhill, New Mexico, pro se; Grant L. Vaughn, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for Bureau of Land Management; Michael J. Cardigan, Esq., Albuquerque, New Mexico, for Intervenor First National Bank of Artesia, New Mexico.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Thelbert Watts has appealed an October 24, 1996, decision issued by Administrative Law Judge S. N. Willett affirming a May 1, 1995, decision issued by the Roswell, New Mexico, District Office, Bureau of Land Management (BLM). The BLM decision denied Watts' request for permission to remove range improvements from Cuevo East Allotment No. 79024 and Cuevo West Allotment No. 79025, or receive compensation for the value of those improvements. The appeal to Judge Willett was docketed as NM-06-95-2.

Watts owned the Cuevo Ranch in Chavez County, New Mexico, and held Federal grazing permit Nos. 79024 and 79025, and several State grazing allotments. Between 1961 and 1989 BLM issued a number of permits and cooperative agreements to Watts, allowing Watts to install range improvements on the public lands subject to the grazing permits.

On April 29, 1988, Watts borrowed money from the First National Bank of Artesia (FNBA). This loan was secured with a mortgage of the ranch and its appurtenances. (Intervenor's Exh. A.) On May 1, 1989, Watts executed an additional security agreement with FNBA, pledging his livestock and "all attachments, accessions, tools, parts, supplies, increases and additions to and all replacements of and substitutions for any property described above." (Intervenor's Exh. B.) On August 26, 1991, FNBA filed an action in District Court for Chavez County, New Mexico, seeking foreclosure of Watts' mortgage and replevin of personal property and livestock located on the ranch. In April 1992, Watts filed a petition for bankruptcy seeking relief under Chapter 12 of the Bankruptcy Code.

The Fifth Judicial District Court, State of New Mexico, entered a stipulated judgment and decree of foreclosure on September 23, 1993. Under that judgment, Watts conveyed all of his rights in Cuevo Ranch and the use of the State grazing allotments to FNBA in exchange for its release of the debt secured by the mortgage and security agreement. The court also ordered termination of Watt's interest in Federal grazing permit Nos. 79024 and 79025. (Foreclosure Judgment at 7.) A Special Master's Deed to the ranch was issued, conveying the property to FNBA on December 20, 1994, and Watts' right of redemption expired on January 20, 1995.

On February 3, 1995, Watts delivered a written request to BLM seeking permission

> to remove all Section 4 permitted improvements and any other improvements placed on the Watts allotment which may not be covered by a permit due to possible incomplete records * * *. [1/]

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1/ The following list of improvements was attached to his request:
"Sec. 21, 6, 8, 17 T17S / T18S R/17E[;] Permitted 8/4/66 1.25 Miles Fence[.]
Sec. 34 SW NW NE T17S R16E[;] Permitted 5/15/89 #7061 1000 BBL Tank 500 Ft. 1 1/4 Pipeline[.]
Sec. 19 T17S R17E SW NW 1/4 [;] Permitted 4/20/86 #4240 500 BBL Tank 1 Drinking Tub[.]
Sec. 34, 1 T17S T18S R16E[;] Permitted 8/4/66 .75 Miles Fence[.]
Sec. 17, 18 T17S R17E[;] # NM 6-R-1259 1.5 Miles Pipeline 2 Drinking Tubs[.]
Sec. 21 T17S R17E SE SE[;] Permitted 6/29/66 Corrals and Shed[.]
Sec. 1, 2, 35 T17S T18S R16E[;] Permitted 10/2/61 1.2 Miles Fence[.]
Sec. 18, 19, 30, 17 T17S R17E[;] 2 Miles Pipeline 1 Tub[.]
Sec. 17, 20, 29, 32 T17S R17E[;] 3.5 Miles Fence, 1 Dirt Tank 1 Drinking Tub[.]
Sec. 21, 33 T17S R17E[;] 2 Drinking Tubs[.]
Sec. 5 T18S R17E[;] Permitted 10/4/61 #NM 6-4-81 .3 Miles Fence[.]"

> I would like to refer you to Case no. CV 91-344 First National Bank v. Thelbert L. Watts Amended Notice of Sale Dated Dec. 8, 1994. No mention of any [BLM] Leases or any permited [sic] improvements are [sic] made in the Notice of Sale there fore [sic] we contend we are still in posession [sic] of any and all improvements placed on [BLM] Leases.
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> I would ask you before any transfer of these leases are finalized we have the opportunity to remove these improvements or be compensated at a fair market value for them.

A Notice of Proposed Decision was issued on March 22, 1995. In its proposed decision BLM's Carlsbad (New Mexico) Area Manager relied on a Field Solicitor opinion that the application to remove should be denied because the foreclosure judgment constituted evidence of an assignment of interest in the range improvements. Watts protested, arguing that the improvements were personal property or "trade property," and that it was never intended that this personal property would be included in the mortgage or the foreclosure judgment.

On May 1, 1995, BLM's Roswell (New Mexico) District Office issued a Final Decision. Addressing Watts' arguments, the District Office concluded that the foreclosure judgment terminating Watts' interest in "BLM permits" also terminated his interest in the section 4 range improvements. BLM further ruled that those improvements, whether classified as personal, trade, or real property, were encumbered when the ranch was mortgaged because the ranch would not be a viable livestock operation without them. BLM denied Watts' application for permission to remove the improvements, and held that the regulatory requirement for compensation had been satisfied by the foreclosure judgment.

Watts appealed to the Hearings Division, Office of Hearings and Appeals, pursuant to 43 C.F.R. § 4160.4. By agreement dated February 1, 1996, Watts and BLM agreed to have Judge Willett decide the appeal on stipulated facts and the record without a hearing. Judge Willett also allowed FNBA to appear as an intervenor. Before Judge Willett Watts argued that he was entitled to either remove or be compensated for the range improvements. It was his opinion that, although the stipulated judgment terminated his interest in the grazing permits, it did not address or purport to terminate his interest in the improvements. He further argued that the improvements at issue are "classifiable as trade fixtures," which he defines as "personal property placed on real property by a tenant in possession to further the conduct of the tenant's business or trade on the property." (Oct. 24, 1996, Decision at 3.)

In response, BLM argued that the one issue to be considered on appeal was whether BLM's decision was unsupported by a rational basis and asserted that Watts was unsuccessful in arguing that aspect. It also argued that Watts was barred from removing the improvements because he waited until after foreclosure and the expiration of his right of redemption before

asking for permission to remove the improvements, and that the compensation requirement was satisfied by the release of Watts' debt obligation. According to BLM, the concept of trade fixtures became immaterial when the foreclosure proceeding terminated his interest in the permits.

Intervenor FNBA joined BLM in the argument that the standard of review is whether the final BLM decision lacked a rational basis and argued that a rational basis was presented by BLM for its actions. FNBA also asserted that the intent of the state court proceedings, as shown in the various documents involved, was to terminate Watts' interest in the permits, including his interest in the improvements. FNBA further argued that the common-law principle of trade fixtures has never been applied to a grazing lease and that, as improvements are necessary to the operation of the ranch, they are not trade fixtures under state law. FNBA also claimed that Watts was compensated through the release of his indebtedness.

In her decision denying Watts' request for relief, Judge Willett first concluded that, under Departmental regulations, only the removable improvements authorized by range improvement permits are subject to either removal or compensation requests. 2/ Judge Willett noted that certain of the improvements were installed or maintained pursuant to cooperative agreements, and that under the express terms of those agreements, title to those improvements is in the United States (with consideration to be given to the participant's own contribution). She next concluded that, although state courts do not have the jurisdiction to cancel or transfer rights in BLM grazing permits, state courts may accept a relinquishment of those rights, and that the state court accepted the relinquishment of Watts' interests in the permits.

Noting that the loss of base property automatically terminates a permittee's rights in a grazing allotment, Judge Willett determined that the loss of the base property did not automatically result in the loss of title to removable range improvements. She then held that the regulation cited by Watts as the basis for his right to either remove the improvements or receive compensation from the United States is applicable when the permits are canceled to devote the public lands to other purposes, and does not extend to private transfers, such as the case before her. She concluded that the United States has no obligation to pay compensation for the loss of improvements resulting from the private transfer of the base property. Finally, Judge Willett found that under the bankruptcy reorganization plan filed by Watts, the stipulated judgment, and the foreclosure decree, FNBA was the named beneficiary of Watts' permits. She found the language of the release executed by Watts to be absolute and binding on him, and that he had no further action against FNBA for compensation or removal of range improvements.

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2/ Copies of BLM authorized permits and cooperative agreements for allotment Nos. 79024 and 79025 are in the record as FNBA Exhibit Q.

Watts does not agree with Judge Willett's decision. On appeal, he tersely declares without supporting explanation that the improvements at issue are legally classified as trade fixtures, were not included as property subject to the foreclosure judgment, and may be removed if no damage results. No other statements were received.

In its response, FNBA argues that Watts did not adequately state reasons for the appeal, and that the appeal is subject to summary dismissal. For the most part, his statement of reasons (SOR) amounts to little more than conclusory allegations of error or reiteration of arguments made to Judge Willett. To constitute an adequate SOR, an appellant's document must affirmatively point out error in the decision from which he appeals. See, e.g., J.W. Weaver, 124 IBLA 29, 31 (1992); In re Mill Creek Salvage Timber Sale, 121 IBLA 360, 362 (1991); Andre C. Capella, 94 IBLA 181 (1986). The Board is not required to dismiss an appeal in such circumstances, but we will not hesitate to do so when there is no basis for review. J.W. Weaver, supra. With respect to reiteration of arguments, we note that the right of review provided by this Board is not intended to be a circular promenade in which the parties simply repeat their steps. In Shell Offshore, Inc., 116 IBLA 246, 250 (1990), we held that the requirement to affirmatively point out how the decision appealed is in error is not satisfied if the appellant "has merely reiterated the arguments considered by the [decisionmaker below], as if there were no decision * * * addressing those points." Accord, In re Mill Creek Salvage Timber Sale, supra. As Watts has not attempted to show any error in the decision appealed, it would be appropriate to summarily affirm. However, for reasons set forth below, we deem it appropriate to address the decision.

[1] Section 4 of the Taylor Grazing Act of 1934, 43 U.S.C. § 315c (1994), allows permittees to construct range improvements on public lands "under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve." Congress also spoke to the disposition of such improvements, should a permittee no longer be in possession of the grazing right:

> No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules and regulations of the Secretary of the Interior.

43 U.S.C. § 315c (1994).

> Whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value * * *

> of his interest in authorized permanent improvements placed or constructed by the permittee.

43 U.S.C. § 1752(g) (1994). The regulations implementing these statutes are found at 43 C.F.R. § 4120.3. Range improvements may not be installed without a cooperative agreement or permit. 43 C.F.R. § 4120.3-1(b). 3/ Prior to 1995, the regulations provided that title to removable improvements was "shared by the United States and the cooperator(s) in proportion to the actual amount of respective contribution to the initial construction," and that the title to permanent improvements was exclusively in the United States, subject to valid existing rights. 43 C.F.R. § 4120.3-2 (1994). 4/ The regulations also provide that improvements may not be removed without authorization. 43 C.F.R. § 4120.3-6(a). 5/ Permittees are allowed 180 days from the date of cancellation of a permit to salvage material owned by them. 43 C.F.R. § 4120.3-6(d). When a permit is transferred, BLM will not authorize the transferee's use of existing improvements until the transferor is compensated for those improvements. 43 C.F.R. § 4120.3-5. In addition, the United States must reasonably compensate the former permittee for the permittee's interest in improvements on the public lands subject to the canceled permit. 43 C.F.R. § 4120.3-6(c).

There can be no question that Watts' right to the allotments terminated when he forfeited his title to the base property. 43 C.F.R. § 4110.2-1(d); Dale D. Smith v. BLM, 129 IBLA 304 (1994). As duly noted by Judge Willett, the permits were not canceled to allow BLM to dedicate the lands subject to the permits to a use other than grazing, and therefore there is no authority for the Department to compensate him for interests in the improvements not removed. Thus, it is clear that Watts has no basis for seeking compensation from the United States.

Compensation for any interest in improvements is properly addressed by referring to 43 C.F.R. § 4120.3-5, under which BLM is responsible to ensure that the prior permittee has been properly compensated for remaining improvements before a successor-in-interest may utilize them. BLM recognized the transfer of the Cuevo Ranch to FNBA through the foreclosure proceedings and it appears that BLM will authorize grazing permits for the

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3/ Installing improvements without authorization constitutes trespass. 43 C.F.R. §§ 2800.0-5(u), 2801.3. Unauthorized installation of an improvement on a grazing allotment subjects the party to civil and criminal penalties. 43 C.F.R. § 4140.1(b)(2).

4/ The regulation at 43 C.F.R. § 4120.3-2 was amended in 1995. See 60 Fed. Reg. 9964 (Feb. 22, 1995).

5/ Compare with n.3. Unauthorized removal constitutes trespass and subjects the party to civil and criminal penalties. 43 C.F.R. §§ 4120.3-6(a) and 4140.1(b)(2).

allotments when FNBA designates Watts' successor and applications for permits are properly submitted. Thus, the issue under these facts is whether Watts has been adequately compensated by his successor-in-interest.

As Judge Willett adeptly explained, all evidence from the state court proceedings indicate that Watts released all right to any further claim against FNBA despite his contentions that range improvements were not considered part of the foreclosure settlement. In the BLM determination which Watts had appealed, BLM had concluded:

> 1. The language dealing with this point is taken from the Court Order #6 of the stipulated foreclosure judgement [sic]: "Terminating Defendants' interest in the BLM permits known as Cuevo West Allotment #9025 and East Allotment #9024 (the `BLM Permits')." This language is not exclusive to only grazing permits, but terminates all interest in the entire allotment, including Range Improvement Permits used to authorize Section 4 improvements * * *.
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> 2. The above language terminates your interest in the range improvements, regardless of whether you call them trade, real, or personal property. * * * It stands to reason such improvements were encumbered when the ranch was mortgaged.

(Decision at 2.) BLM's final conclusion was that "the foreclosure judgement [sic] constitutes evidence of assignment of interest in the range improvements, which satisfies the regulatory requirement for compensation." Id. Judge Willett recognized that none of the instruments associated with foreclosure or bankruptcy specifically mentioned range improvements. The mortgage and promissory note related specifically to the deeded property, and additional security given by Watts in 1988 and 1989 related to matters appurtenant to or associated with the deeded property. Under the Chapter 12 Reorganization Plan, Watts made FNBA the beneficiary of his grazing permits. (FNBA Exh. J.) An amendment to the promissory note added Watts' rights in the BLM permits as additional security, but did not mention the improvements specifically. However, as Judge Willett observed, the General Release executed by Watts on February 4, 1993, provided for the discharge of all claims "related in any way" to the foreclosure suit and loan. Judge Willett concluded that this language operated "as an absolute release of FNBA by Appellant from all further claim, demand, liability or causes of action of any type." (Decision at 9.) She also referred to the release in the reorganization plan as further support for her conclusion. See FNBA Exh. J, at 9, Sec. 6.3. The General Release executed by Watts on December 5, 1994, also discharged all claims and counterclaims "that were or could have been asserted in or were arising out of or related in any way" to the loan, the bankruptcy proceedings, and the foreclosure judgment "whether known or unknown." (FNBA Exh. H.) All these releases were given for valuable consideration, a compromise settlement of disputed claims. Based on this record, Judge Willett had a reasonable basis for her conclusion that there was no cause of action against FNBA for further

compensation. 6/ Watts has not shown error in Judge Willett's conclusions. Thus, we find that BLM acted properly in refusing Watts' application because Watts had been compensated for the improvements on the permitted lands.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

R.W. Mullen
Administrative Judge

I concur:

T. Britt Price
Administrative Judge

6/ Had Watts raised sufficient doubt regarding whether he had been compensated for the improvements, denial of Watts' request would be proper. The Department has historically declined to adjudicate private disputes involving the validity or effect of the transfer of rights or property and has maintained the status quo until the parties have had an opportunity to settle their dispute privately or in a court of competent jurisdiction. E.g., H. Arvene Cooper and Brent David Cooper v. BLM, 144 IBLA 44 (1998); Fimple Enterprises, Inc., 70 IBLA 180 (1983); William B. Brice, 53 IBLA 174, aff'd, Brice v. Watt, No. C-81-0155 (D. Wyo. Dec. 4, 1981), aff'd No. 82-1455 (10th Cir. Oct. 4, 1983).